
United States
Circuit Court of Appeals
 For the Ninth Circuit.

4

In the Matter of
 ABE SILVERSTEIN,
 Bankrupt.

WM. H. MOORE, JR., Trustee in Bankruptcy for the
 Estate of Abe Silverstein, Bankrupt,
 Appellant,

vs.
 ABE SILVERSTEIN,
 Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern
 District of California, Central Division.

FILED

MAY 7 1937

PAUL P. JONES

CLERK

No.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant :

W. T. CRAIG, Esq.,
THOMAS S. TOBIN, Esq.,
Board of Trade Building,
Los Angeles, California.

For Appellee :

D. M. POTTER, Esq.,
A. J. GETZ, Esq.,
Chapman Building,
Los Angeles, California.

United States of America, ss.

To THE BANKRUPT, ABE SILVERSTEIN, and
MESSRS. POTTER & GETZ, His Attorneys,
Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 18 day of July, A. D. 1929, pursuant to ORDER AND DECREE in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain matter entitled In the Matter of Abe Silverstein, Bankrupt, No. 11427-J and you are ORDERED to show cause, if any there be, why the ORDER AND DECREE DISCHARGING THE BANKRUPT AND CONFIRMING THE FINDINGS OF JAMES L. IRWIN, ESQUIRE, AS SPECIAL MASTER in the said MATTER mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM P. JAMES
United States District Judge for the Southern
District of California, this 21 day of June, A. D.
1929, and of the Independence of the United
States, the one hundred and fifty-three.

WM. P. JAMES,

U. S. District Judge for the Southern
District of California.

[Endorsed]: Service of above citation admitted June 21, 1929. D. M. Potter and A. J. Getz, Attys. for bankrupt. Filed Jun. 26, 1929, at 30 Min. past 9 o'clock A. M. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy.

ORDER OF REFERENCE.

AT A STATED TERM, to-wit: the July term A. D., 1928, of the DISTRICT COURT OF THE UNITED STATES OF AMERICA WITHIN AND FOR THE SOUTHERN DIVISION OF THE SOUTHERN DISTRICT OF CALIFORNIA, held in the Courtroom thereof in the City of Los Angeles on Monday, the third day of December, in the year of our Lord nineteen hundred twenty eight, PRESENT, WILLIAM P. JAMES, District Judge in the Matter of Abe Silverstein, Bankrupt, 11427-J.

This matter coming before the Court at this time for hearing on the Petition of the bankrupt for discharge and specifications of objection to discharge having been filed on November 27, 1928, it is by the Court ORDERED that this matter be referred to James L. Irwin, Referee in Bankruptcy, as Special Master herein, to hear the issues raised by said specifications of objection to discharge and report the same to this Court, together with his findings of fact and conclusions of law thereon.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

IN BANKRUPTCY.

NO. 11427-J.

		SPECIFICATIONS OF
In the Matter of)	OBJECTION TO
ABE SILVERSTEIN,)	DISCHARGE OF
Bankrupt.)		BANKRUPT.

COMES now WM. H. MOORE, JR., Trustee in Bankruptcy for the Estate of Abe Silverstein, Bankrupt, and enters his appearance in opposition to the discharge of said bankrupt, and respectfully shows to the

court that he is a party interested in the estate of the above named bankrupt and is the duly appointed, qualified and acting Trustee in Bankruptcy of this Estate; that prior to the filing of these Specifications herein, an Order was made and entered by the Honorable James L. Irwin, Referee in Bankruptcy, permitting your petitioner to interpose objections to the discharge of the bankrupt; that said order was granted after due notice to creditors, and at a meeting called for the purpose of acting thereon at the request of J. Jacoby Company, one of the creditors of said bankrupt.

Your petitioner does hereby oppose the granting of a discharge to Abe Silverstein from his debts and for grounds of such opposition does file the following specifications, to-wit:

SPECIFICATION I.

That subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy herein, the said bankrupt willfully and unlawfully transferred, removed or concealed property belonging to his estate, with intent to hinder, delay and defraud his creditors, in that between the first day of January, 1928, and the 12th day of May, 1928, the bankrupt transferred or concealed merchandise or cash, or both, belonging to his estate in the amount of \$8,188.46, for the purpose of hindering, delaying and defrauding his creditors, and that by reason thereof, the bankrupt has committed one of the acts specified in Section 14 B of the Bankruptcy Act of the United States, and by reason thereof should be denied his discharge.

SPECIFICATION II.

That the said bankrupt, Abe Silverstein, while a bankrupt, has failed to explain satisfactorily losses of assets,

or deficiency of assets, to meet his liabilities amounting to the sum of \$8,188.46 occurring in his business between the first day of January, 1928, and the 12th day of May, 1928, and by reason of the foregoing, the bankrupt has committed one of the omissions specified in Section 14 B of the Bankruptcy Act of the United States, and by reason thereof should be denied his discharge.

SPECIFICATION III.

That said bankrupt, Abe Silverstein, while a bankrupt, concealed certain material records pertaining to his business and affairs, from which his financial condition could be ascertained, in that the said bankrupt at all times since his adjudication in bankruptcy has concealed from his Trustee certain cancelled checks belonging to him, and by reason of the foregoing has committed one of the acts specified in Section 14 B of the Bankruptcy Act of the United States, and by reason thereof should be denied his discharge.

SPECIFICATION IV.

That the said bankrupt failed to keep books of account or records from which his financial condition and business transactions might be ascertained, in that the said bankrupt failed to keep books of account covering his receipts and disbursements subsequent to March 13, 1928, and that by reason of the foregoing he has committed one of the omissions specified by Section 14 B of the Bankruptcy Act of the United States and by reason thereof should be denied his discharge.

SPECIFICATION V.

That the bankrupt, Abe Silverstein, in contemplation of the filing of a petition in bankruptcy, and with the intent to deceive his creditors and Trustee, falsified cer-

tain books, documents and records pertaining to the transaction of his business in that the books and records of the bankrupt, pretending to reflect the condition of his business subsequent to March 13, 1928, were fraudulent and fictitious books and records made up by the bankrupt, so the objector is informed and believes, for the purpose of deceiving and misleading the Trustee in Bankruptcy and that by reason of the foregoing the bankrupt has committed one of the offenses punishable by imprisonment, as specified by Section 29 B of the Bankruptcy Act of the United States, and by reason thereof should be denied his discharge.

The Trustee further alleges that all of the acts and omissions specified and set forth in the foregoing Specifications of Objection to the discharge of the bankrupt were knowingly and wilfully done by the bankrupt with the intent on his part to hinder, delay and defraud his creditors.

WHEREFORE, Your petitioner prays that the discharge of the bankrupt from his debts in bankruptcy be denied.

Wm. H. Moore, Jr.,
Trustee in Bankruptcy.

W. T. Craig
Attorney for Trustee.

UNITED STATES OF AMERICA)
SOUTHERN DISTRICT OF CALIFORNIA)ss.
SOUTHERN DIVISION)
COUNTY OF LOS ANGELES)

WM. H. MOORE, JR., being duly sworn, says: That he is Trustee in Bankruptcy, the petitioner in the fore-

going entitled matter; that he has read the foregoing SPECIFICATNONS OF OBJECTION TO THE DISCHARGE OF THE BANKRUPT and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes them to be true.

Wm. H. Moore, Jr.

Subscribed and sworn to before me
this 24th day of November, A. D.
1928.

Bess A. Aldrich
Notary Public in and for the County
of Los Angeles, State of California
[Notarial Seal]

[Endorsed]: Filed November 27, 1928, at.....min.
past 12 o'clock M. R. S. Zimmerman Clerk
B. B. Hansen, Deputy

[TITLE OF COURT AND CAUSE.]

REPORT OF SPECIAL MASTER AFTER HEAR-
ING OBJECTIONS TO DISCHARGE.

TO THE HONORABLE WILLIAM P. JAMES, Judge
of the District Court of the United States, for the
Southern District of California:

The undersigned, Referee of your Court, to whom
as Special Master was heretofore referred the matter
of the specifications of the objections to the discharge
of the bankrupt herein, hereby respectfully reports as
follows:

The matter was duly set for hearing before me, after due notice to the bankrupt and his attorneys, and the bankrupt appeared in person and by A. J. Getz, his counsel. The trustee appeared by his attorneys and evidence was introduced, both oral and documentary, on behalf of the trustee and on behalf of the bankrupt. The matter was argued and submitted and thereafter, desiring further testimony, the submission was set aside, and the parties notified to appear and present further testimony. This testimony was taken and the matter argued and submitted. A transcript of the evidence taken accompanies this report.

And the Special Master, being fully advised in the premises, makes the following Findings of Fact, Conclusions of Law and Recommendation.

FINDINGS OF FACT.

I. The Special Master finds that it is not true that subsequent to the 1st day of the twelve months immediately preceding the filing of the Petition in Bankruptcy herein, or at any time, the said Bankrupt wilfully and/or unlawfully transferred or removed or concealed any property belonging to his estate with intent to hinder, delay and defraud or hinder, delay or defraud his creditors or any of them, or willfully and/or unlawfully transferred or removed or concealed any property whatsoever, and that it is not true that between the 1st day of January, 1928, and the 12th day of May, 1928, or at any other time, the Bankrupt transferred or concealed merchandise or cash or either of them belonging to his estate in the amount of \$8,188.46, or any other sum, for the purpose of hindering, delaying or defrauding

or hindering, delaying or defrauding his creditors, or at all.

II.

That it is not true that the said Bankrupt, Abe Silverstein, while a bankrupt or otherwise, has failed to explain satisfactorily losses of assets or deficiency of assets to meet his liabilities, amounting to the sum of \$8,188.46, or any other sum, occurring in his business between the 1st day of January, 1928, and/or the 12th day of May, 1928, or any other dates, and that it is not true that the Bankrupt did not possess or account for sufficient assets to pay all of his liabilities in full. And the Special Master finds as a fact that at the time of the assignment for the benefit of the creditors to the Los Angeles Wholesalers Board of Trade, made by the Bankrupt herein, the said Bankrupt had and accounted for total assets in excess of all his liabilities and was not insolvent at the time of said assignment.

III.

That it is not true that the said Bankrupt, Abe Silverstein, while a bankrupt or otherwise, or at all, concealed certain or any material or any records pertaining to his business and/or affairs from which his financial condition could be ascertained, and that it is not true that the said Bankrupt at any time or at all since his adjudication in bankruptcy has concealed from his trustee certain or any cancelled checks belonging to him. That the Special Master finds that it is true that at all times during the business career of the Bankrupt it was the practise of the Bankrupt to enter a memorandum of each check drawn in his regular books of account and upon the return of the cancelled checks from the bank

to check the same with his books and after verifying the amounts to destroy the checks. That such practise was not a part of any scheme or intent whatsoever to conceal or destroy any information concerning his receipts or disbursements or with any wrongful intent whatsoever and that the same was done openly and with the knowledge of various creditors.

IV.

The Special Master finds that it is not true that the said Bankrupt failed to keep books of account or records from which his financial condition and/or business transactions might be ascertained and that it is not true that the said Bankrupt failed to keep books of account covering his receipts and/or disbursements subsequent to March 13, 1928, or at any other date.

V.

That it is not true that the Bankrupt, Abe Silverstein, in contemplation of the filing of a Petition in Bankruptcy and/or otherwise or at all, with the intent to deceive his creditors and/or trustee or either or any of them or at all, falsified certain or any books or documents or reports pertaining to the transaction of his business and that it is not true that the books and/or records of the bankrupt subsequent to March 13, 1928, were fraudulent and/or fictitious books and/or records made up by the Bankrupt for the purpose of deceiving and/or misleading the trustee in bankruptcy or any one else. The Special Master finds that it is true that the said Abe Silverstein, up to the said 13th day of March, 1928, employed a competent auditor and bookkeeper to keep the books and records of his business and that until the said date the said books were kept in an accurate

and proper manner. That on or about the said March 13, 1928, the said Abe Silverstein, desiring only to minimize the expense of his business and not for the purpose of deceiving or misleading or defrauding any person whatsoever discharged the said bookkeeper and thereafter and until the said assignment to the creditors kept the books himself. That the said Abe Silverstein was not capable intellectually of keeping a double entry set of books and that for the purpose of keeping a record of his transactions which he could understand the said Abe Silverstein copied all of the items subsequent to the 1st day of January, 1928, in a single entry book. That in so copying the said Abe Silverstein corrected certain entries which had been made in the original books where such original books did not correctly report the transactions. That such corrections were made only for the purpose of correctly, truly and accurately recording actual receipts and disbursements and not for the purpose of falsifying, concealing or misrepresenting such transactions or of defrauding any person whatsoever. The Special Master further finds that such single entry books so kept by the Bankrupt were not proper books of account from a technical bookkeeping standpoint but that said books accurately recorded and set out all of the transactions had in said business and were kept by the said Bankrupt in good faith and to the best of his ability and without any intent to deceive, mislead or defraud any person whatsoever.

CONCLUSIONS OF LAW.

And as Conclusions of Law from the foregoing Findings of Fact the Special Master finds:

I.

That it is not true that the Bankrupt has committed any of the acts specified in Section 14-B of the Bankruptcy Act, or committed any act prescribed by the said Bankruptcy Act as a cause or reason for denying his discharge.

II.

The Special Master further finds that the said Bankrupt has fully and fairly complied with all the requirements of the National Bankruptcy Act and acted in good faith at all times and was justified under all of the circumstances of the case in each and every act performed by him in connection with his business and the proceedings in bankruptcy.

RECOMMENDATION.

The Special Master respectfully recommends that a discharge be granted to the Bankrupt, Abe Silverstein.

My fees and expenses on said reference are \$50.00 and disbursements \$10.00 for a Shorthand Reporter.

I transmit to you herewith the following papers:

1. Specifications of Objection to Discharge.
2. Order of reference.
3. Notice of Hearing.
4. Notice of reopening to take testimony.
5. Oath of Special Master.
6. Transcript of Testimony.
7. Exhibit.

Dated this 8th day of May, 1929.

Respectfully submitted,

James L Irwin
Special Master.

The foregoing Report and Recommendation of the Special Master, and the fees and allowances asked for therein, are hereby approved.

Dated this.....day of May, 1929.

District Judge.

[Endorsed]: Filed May 11, 1929 at 45 min. past 10 o'clock A. M. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy.

[TITLE OF COURT AND CAUSE.]

OATH OF SPECIAL MASTER

I, James L. Irwin, Referee in Bankruptcy for the territorial district comprising the county of Los Angeles, to whom the above entitled matter was referred by order of the District Court of the United States, for the Southern District of California, Southern Division, on the 3rd day of December, 1928, as Special Master, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of such Special Master according to the best of my ability, and do solemnly swear that I will administer justice without respect to persons and do equal right to the poor and to the rich, and that I will faithfully and impartially perform all the duties incumbent upon me as such Special Master according to the best of my ability and understanding agreeably to the Constitution and Laws of the United States. So Help me God.

James L Irwin

Subscribed and sworn to before me
this 4th day of December, 1928.

[Seal] Eleanor C. Rose
Notary Public in and for said
County and State.

[Endorsed]: Filed May 11, 1929 at 45 min. past
10 o'clock A. M. R. S. Zimmerman, Clerk, B. B.
Hansen, Deputy.

[TITLE OF COURT AND CAUSE.]

NOTICE OF REOPENING TO TAKE TESTIMONY.

TO ABE SILVERSTEIN, BANKRUPT, and

TO MESSRS. POTTER & GETZ, Attorneys for Bank-
rupt, C. C. Chapman Building, Los Angeles, Cali-
fornia:

You will please TAKE NOTICE that Honorable James L. Irwin, Special Master appointed by the Judge of the above named Court, to take testimony, make findings of fact, conclusions of law and report, has reopened the hearing on the opposition to discharge of said bankrupt for the purpose of taking further testimony regarding the correctness of the inventory of the bankrupt's stock taken by the representatives of the Board of Trade, the correctness of which was disputed by the bankrupt, and that further testimony will be taken by the said Special Master at his Courtroom in the H. W. Hellman Building, in the City of Los Angeles, County of Los Angeles and State of California on Thursday, March 28th, 1929, at two o'clock P. M.

DATED at Los Angeles, in the Southern District of California, this 18th day of March, 1929.

W. T. Craig

Attorney for Trustee and
Objector.

[Endorsed]: Service of the within Notice is hereby admitted this 21 day of March, 1929. D. M. Potter & A. J. Getz, Attorney for Bankrupt. Filed Mar. 21, 1929 at.....Min. past 4 o'clock P. M. James L. Irwin, Referee. Eleanor C. Rose, Clerk. B.

Filed May 11, 1929, at 45 min. past 10 o'clock A. M. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy.

[TITLE OF COURT AND CAUSE.]

EXCEPTIONS TO REPORT OF SPECIAL
MASTER.

EXCEPTION I.

The Trustee excepts to Finding of Fact II, that it is not true that said bankrupt, Abe Silverstein, while a bankrupt or otherwise, has failed to explain satisfactorily losses of assets or deficiency of assets to meet his liabilities amounting to the sum of \$8,188.46 or any other sum, for the reason that the audit made of the bankrupt's affairs by a certified public accountant shows a shrinkage between January 1, 1928, and March 12, 1928, amounting to the sum of \$8,188.46, and that said shrinkage is not explained by the bankrupt anywhere in the record.

EXCEPTION II.

The Trustee excepts to the Master's Finding of Fact III. as follows:

“That it is not true that the said Bankrupt, Abe Silverstein, while a bankrupt or otherwise, or at all concealed certain or any material or any records pertaining to his business and/or affairs from which his financial condition could be ascertained, and that it is not true that the said Bankrupt at any time or at all since his adjudication in bankruptcy has concealed from his Trustee certain or any cancelled checks belonging to him. That the Special Master finds that it is true that at all times during the business career of the Bankrupt it was the practice of the Bankrupt to enter a memorandum of each check drawn in his regular books of account and upon the return of the cancelled checks from the bank to check the same with his books and after verifying the amounts to destroy the checks. That such practice was not a part of any scheme or intent whatsoever to conceal or destroy any information concerning his receipts or disbursements or with any wrongful intent whatsoever and that the same was done openly and with the knowledge of various creditors.”

For the reason that the evidence shows that the bankrupt not only destroyed his cancelled checks, but also destroyed and mutilated his check stubs, check books, bank statements and all other records pertaining to his banking transactions, and for the further reason that any destruction of books or records from which a bankrupt's financial conditions and business transactions might be

ascertained is a violation of Section 14 B of the Bankruptcy Act unless the acts were justified; That there is no justification of the bankrupt's acts in such destruction or mutilation of such records; That an individual case does not excuse a violation of the law, and that there is no evidence whatsoever to show that it was the bankrupt's custom to destroy his check books, check stubs and all other records pertaining to his bank account.

The Trustee especially excepts to this Finding for the reason that there is no evidence to justify such a Finding or to sustain the burden of proof imposed upon the bankrupt under Section 14 B 7 of the Bankruptcy Act of the United States.

EXCEPTION III.

The Trustee excepts to Finding IV as not justified by the evidence.

EXCEPTION IV.

The Trustee excepts to Finding of Fact V for the reason that said Finding is absolutely contrary to the evidence.

EXCEPTION V.

The Trustee excepts to Conclusion of Law I as based on Findings of Fact contrary to the evidence.

EXCEPTION VI.

The Trustee excepts to Conclusion of Law II as based on Findings of Fact contrary to the evidence.

WHEREFORE, the Trustee prays that the above Exceptions be sustained, the Findings of the Master reversed, and the bankrupt's discharge denied.

W. T. Craig,
ATTORNEY FOR TRUSTEE.

[Endorsed]: Service of the within Exceptions is hereby admitted this 19 day of April, 1929. A. J. Getz, D. P. attorney for Bankrupt. Filed Apr. 22, 1929, at 30 min. past 3 o'clock P. M. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy.

At a stated term, to wit: The January Term, A. D. 1929 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 4th day of June in the year of our Lord one thousand nine hundred and twenty-nine.

Present: The Honorable Wm. P. James, District Judge.

IN RE ABE SILVERSTEIN,)
) No. 11427 Bank.
) Bankrupt.)

The bankrupt herein having heretofore filed his petition for discharge, and objections on the part of the trustee having been made in writing; and the matter of determining the issues raised by said objections having been referred to James L. Irwin, Esq., as special master; and thereafter, said special master having rendered his report, recommending that the discharge of the bankrupt be granted; and the trustee having filed exceptions to said report, which exceptions were thereafter duly argued and submitted; the court, having duly considered the same, now orders that the findings of the special master be and they are approved and confirmed and the application for discharge by the bankrupt is granted.

[TITLE OF COURT AND CAUSE.]

(Discharge of Bankrupt.)

WHEREAS, ABE SILVERSTEIN of LOS ANGELES COUNTY, in said district, has been duly adjudged a bankrupt under the Acts of Congress relating to bankruptcy and appears to have conformed to all the requirements of law in that behalf, it is therefore

Ordered by this Court that the said ABE SILVERSTEIN be discharged from all debts and claims which are made provable by said acts against his estate and which existed on the 28th day of May A. D., 1928, on which day the petition for adjudication was filed against him, excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

WITNESS the Honorable WM. P. JAMES, judge of said district court and the seal thereof this 4th day of June, A. D. 1929.

R. S. ZIMMERMAN

Clerk

By

[Seal]

B. B. Hansen

Deputy

[Endorsed]: Filed June 4, 1929 at 30 minutes past twelve o'clock P. M., R. S. Zimmerman, Clerk, B. B. Hansen, Deputy.

[TITLE OF COURT AND CAUSE.]

STIPULATION OF CERTAIN FACTS.

WHEREAS the issue involved in the appeal in the above entitled action arises only on the opposition to the discharge of the above named bankrupt, and

WHEREAS it is desired to limit the size of the Record for the convenience of the United States Circuit Court of Appeals and counsel, the following jurisdictional facts, preliminary to the application for discharge of the bankrupt and the filing of specifications of objection thereto, are agreed upon by counsel for the appellant and appellee to be as follows, to-wit:

I.

That an involuntary petition in bankruptcy was filed against the bankrupt in the District Court of the United States for the Southern District of California, Southern Division, (Now Central Division) on May 28, 1928, and thereafter on June 18, 1928, an Order was entered adjudging the bankrupt to be a bankrupt within the purview of the Bankruptcy Act of the United States of 1898 and amendments thereto; that between the date of the filing of the petition and the date of adjudication, an examination of the bankrupt and certain witnesses under Section 21 A of the Bankruptcy Act was had.

II.

That on July 24, 1928, the first meeting of creditors was had before James L. Irwin, Esquire, Referee in Bankruptcy, to whom the above proceedings were referred, and at such first meeting of creditors Wm. H. Moore, Jr., was elected Trustee in Bankruptcy for said Estate, filed his bond and qualified, and at all times since has been and now is the duly elected, qualified and acting Trustee in Bankruptcy for said Estate.

III.

That a certificate of compliance was duly issued to said bankrupt for the purpose of applying for his discharge, and that said bankrupt filed his application

for discharge in the District Court of the United States for the Southern District of California, Southern Division, on August 14, 1928; that order of notice thereon was duly and properly published and mailed, and that the hearing on said application was set for December 3, 1928, at the hour of ten o'clock A. M., before Honorable William P. James, Judge of said Court.

IV.

That J. Jacoby Company, a creditor of said bankrupt filed a petition for a meeting of creditors for the purpose of authorizing the Trustee to oppose the discharge of the bankrupt, which said meeting of creditors was held before James L. Irwin, Esquire, Referee in Bankruptcy, at his Courtroom in the H. W. Hellman Building, Los Angeles, California, on November 27, 1928, at ten o'clock A. M., and that an Order was on that day made and entered authorizing the Trustee to oppose the discharge of the bankrupt, which said Order was authorized by a majority in number and amount of creditors present or represented at said meeting.

DATED at Los Angeles, in the Southern District of California, this 14th day of June, 1929.

W. T. Craig

Thomas S. Tobin

SOLICITORS FOR TRUSTEE AND
OBJECTOR.

D. W. Potter & A. G. Getz

SOLICITORS FOR BANKRUPT.

[Endorsed]: Filed Jun. 21, 1929 at min. past
5 o'clock P. M. R. S. Zimmerman, Clerk, B. B. Hansen.
Deputy.

(Testimony of Abe Silverstein.)

[TITLE OF COURT AND CAUSE.]

STATEMENT OF FACTS OF APPELLANT.

BE IT REMEMBERED, that upon the hearing of Trustee's Opposition to the Discharge of the bankrupt before Honorable James L. Irwin, Special Master, *Suit* 834 H. W. Hellman Building, Los Angeles, California, on February 28th and March 28th, 1929, there appeared THOMAS S. TOBIN, ESQ., of counsel for the Trustee and MESSRS. POTTER & GETZ, attorneys for the bankrupt, whereupon the following proceedings were had and testimony was adduced, to-wit:

ABE SILVERSTEIN.

Called as a witness by the Trustee and having been first duly sworn by the Special Master testified as follows:

DIRECT EXAMINATION.

My name is Abe Silverstein. I am the bankrupt in this proceeding. I was in the business of Gent's Furnishings and Clothing for about six years. I was not in partnership with anyone else, but was always alone. When I started in business I had about \$3,000 capital borrowed from my brother-in-law Morris Heller. I built my fixtures myself. An involuntary petition in bankruptcy was filed against me in May, 1928. In March, 1928, I had made an assignment for the benefit of creditors to the Los Angeles Wholesalers' Board of Trade.

"Q. Between the first day of January, 1928, and the date of your assignment for the benefit of

(Testimony of Abe Silverstein.)

creditors to the Los Angeles Wholesalers' Board of Trade you purchased \$26,000 worth of merchandise from various wholesalers, did you not?

A. I don't know exactly, I think around that."

I remember the time of my examination in this Court before the Master.

"Q. And at that time I asked you this question: 'And how much merchandise have you bought since the first of the year?' You answered: 'I think it is \$26,000.' Also this question: '\$26,000 worth of merchandise?' You answered: 'Yes, \$26,000 worth of merchandise.' Now, how much of that \$26,000 worth of merchandise have you paid for

A. Well, I paid everything that was to be paid, and I discounted the bills, all of them up to that time, up to the time I turned over that to the Board of Trade, and I did that because I went to a creditor and told him that my bills would be due in a few days, and Klein-Norton's man says: 'What do you want to do?' And I says: 'I want to get an extension before that.'

THE SPECIAL MASTER: Just answer the question, without going into anything outside of the question.

THE WITNESS: Yes, sir.

Q. You scheduled in your bankruptcy schedules unsecured indebtedness amounting to \$22,722.40; that represented merchandise indebtedness, did it not?

A. I guess so."

(Testimony of Abe Silverstein.)

I paid for more than \$3,000 worth of this \$26,000 worth of merchandise I bought between January 1st and March 1st, 1928. I listed all of this merchandise and turned it over to the Board of Trade more than \$20,000 worth of merchandise, and I paid more than \$6,000 including expenses and therefore it shows what the amount was and I haven't taken anything away.

I kept a bookkeeper as long as I could, as long as business would keep up and when business dropped, I kept the book myself to be able to tell my auditor. I let my bookkeeper go in February, 1928.

“Q. You kept a bank account like any other merchant?”

A. Yes up to that time.”

I kept my bank account with the Lincoln Heights Branch of the Citizens Trust & Savings Bank. I got my cancelled checks back regularly.

“Q. It is a fact, *it is* not, that just before you went into bankruptcy, you destroyed all of your bank records, including your bank statements?”

A. No, sir, not just before; I had been for every month checking up and everything was entered in my books, then I destroyed them.”

I destroyed all of my cancelled checks. I destroyed all my check stubs. I destroyed all my bank statements and I threw them out in the garbage can. I did not job out large quantities of merchandise between January 1, 1928 and March 1, 1928. When I sold this merchandise to men like Fetterman and other jobbers, I never made any entries in my books showing who I sold it to.

(Testimony of Abe Silverstein.)

I showed what I got for it as daily receipts, whatever I sold I rang it up in the cash register and on the following morning I deposited it.

“Q. You did not put anything in the books to show whether or not you sold \$2,000 worth of merchandise for \$1,000, did you?”

A. No.

Q. But you just put it down \$1,000?

A. Yes, sir, but I never sold that much at a time. I only sold \$75.00 or \$80.00 at a time.”

I jobbed out the odds and ends. I did not buy it from the wholesale house and turn right around and sell it right out. I sold out my odds and ends and old stock and was paying up to that time my bills. I am not able to produce my cancelled checks and bank statements in Court at this time.

“BY THE SPECIAL MASTER: What was the reason then for your destroying them?”

A. I have done that all my life. There is no use keeping them any longer after they are on the books. It is not necessary for me to keep them any longer then.

Q. You did not destroy them until February?

A. No, it was far before that because everybody knows it and I don't keep no secret about it. Every wholesale man that came in knows that.

BY MR. TOBIN: I would like to read into the record at this time beginning at the top of Page 6 of the bankrupt's testimony under the 21 A Ex-

(Testimony of Abe Silverstein.)

amination of June 5, 1928, to save time here, as follows:

'Q. Have you your checks, stubs and cancelled checks?

A. No, sir.

Q. What became of them?

A. I destroyed them, I never keep them.

Q. When did you destroy them?

A. I don't know.

Q. Well, about when did you destroy them?

A. They were there in February, I think.'

Now on Page 8, line 11 of the same Transcript:

'Q. You kept only one book?

A. Yes, sir.

Q. And you destroyed all of the cancelled checks?

A. Yes, sir.

Q. And you destroyed your bank statements too?

A. Yes, sir.

Q. What was the reason for destroying your books, statements and cancelled checks?

A. No reason at all; I just destroyed them.

Q. And the stubs of your checks, too, you destroyed them?

A. So long as I destroyed the checks, I destroyed the stubs.

Q. You knew you were losing money and running behind financially?

A. Yes, sir.

Q. You were running behind so fast that you fired your bookkeeper to save expense?

(Testimony of Abe Silverstein.)

A. Yes and in every way.

Q. Can you tell the Court the reason for destroying all the cancelled checks and check stubs?

A. No reason whatever at all, I just destroyed them.

Q. You knew you were undoubtedly going through bankruptcy, did you not?

A. No, it never went through my mind anything like that.

Q. After you destroyed your cancelled checks and check stubs in February you started a very vigorous campaign of buying merchandise, did you not?

A. No, no more than usual, I always bought lots of goods. I had two stores, but at first I started with one store.' ”

Further excerpts from 21-A examination stipulated into record:

“I threw the checks in the garbage outside in the backyard and there was a man from Klein Norton's there at the time and there was nothing secret about it.

Q. What was your reason for destroying them?

A. I have no room in my small space.

Q. Had you been in the habit of keeping your cancelled checks in the safe up to that time?

A. Yes. I have got to keep them so long, but no longer than I check up.”

(Testimony of Samuel Namson.)

SAMUEL NAMSON.

Called as a witness on behalf of the Trustee being first duly sworn by the Special Master testifies as follows:

My name is Samuel Namson. I am a public accountant.

“MR. TOBIN: Will you stipulate, Mr. Getz, as to Mr. Namson’s qualification as a certified public accountant?”

MR. GETZ: Yes, if you say so.

MR. TOBIN: Yes.”

THE WITNESS: At the request of Mr. DeLano, the Secretary of the Los Angeles Wholesalers’ Board of Trade, I made an examination of the books of the bankrupt here on the table. Identified as Trustee’s Exhibit I and Trustee’s Exhibit II, Trustee’s Exhibit III being a journal, Trustee’s Exhibit IV being the cash journal entries. All marked as Exhibits for identification. I examined each of these Exhibits. I was able from these books to tell something about the financial condition of the bankrupt during the year 1927 and down to the time of the closing of his business May 12, 1928, when the physical inventory was taken of the merchandise. The figures which I am furnishing you here were from a comparative balance sheet. I couldn’t get a statement because his checks were not there and the original books were kept only up until the end of February or the first of March and that other book there, Trustee’s Exhibit I is a transcript of the original book. It is a transcript for the first two months of the year and it was copied wrong because the original books didn’t show that. They

(Testimony of Samuel Namson.)

show more and sales less and we limited ourselves to making up a comparative balance sheet at the end of the year, which we considered to be correct. And at the end of the year when the Board of Trade had taken the physical inventory and also establishing the accounts payable; and at the beginning of the year they had assets:

ASSETS:

Cash on hand	\$ 50.00
Balance in bank	307.85
Merchandise inventory	8600.00
Furniture and fixtures book value	1342.34
Prepaid rent	215.00
	<hr/>
Total assets	\$10515.19

The Liabilities were:

Accounts payable	\$4002.39
Notes payable	1500.00
	<hr/>

Net worth \$5012.80

That is the balance sheet as of January 1, 1928, according to the records. Now after they had executed an assignment, a physical inventory was taken and the assets found to be as follows:

ASSETS:

Cash on hand	\$ 27.50
Merchandise inventory	18115.47
Furniture and fixtures	1342.34
	<hr/>
Total assets	\$19485.38

LIABILITIES:

Accounts payable	\$22661.04
Leaving a deficit of	\$3157.66

(Testimony of Samuel Namson.)

Now taking the net worth at the beginning of \$5012.80 and add the deficit of \$3175.66, that will show a loss for this period from the first of the year of \$8188.46; that is all we found.

I have compared the figures in Trustee's Exhibit I with the books kept by the bookkeeper for the first two months, those books being Trustee's Exhibits II, III and IV.

"Q. What did you find with regard to the truth or falsity of the figures and entries in Trustee's Exhibit I?

A. We think— (interrupted)

MR. GETZ: We object to the witness testifying what he thinks.

THE SPECIAL MASTER: Yes, objection sustained.

THE WITNESS: I found that one of his books *in* incorrect, I don't know which one, but we considered this one correct.

MR. GETZ: I move to strike that out.

THE SPECIAL MASTER: That is not the best evidence.

MR. TOBIN: He qualified as an expert.

THE SPECIAL MASTER: But that doesn't mean very much, "incorrect."

Q. BY MR. TOBIN: Can you point out to the Court in what way the "Trustee's Exhibit No. 1" is incorrect?

MR. GETZ: We object to that as not in evidence.

THE SPECIAL MASTER: Your objection will either be overruled, or your other motion denied.

(Testimony of Samuel Namson.)

MR. GETZ: I have no objection to his pointing out any discrepancy between one and the other, but I do object to his testifying to surmises and his thoughts and speculations.

THE SPECIAL MASTER: He is going to testify to what he has found.

MR. GETZ: I have no objection to that whatever."

THE WITNESS: (Resuming) On the 4th day of January the bookkeeper entered a sale of \$36.53 in Exhibit II and in Exhibit I it appears as \$281.98, the amount being more in Exhibit I. Exhibit I is the book made up by the bankrupt. That entry in Exhibit I was made as of January 8th and in the bookkeeper's book it appears on the 4th. Now on the 7th the bookkeeper's book calls for sales amounting to \$59.55, and in Exhibit I, the bankrupt's book it calls for \$159.55, just \$100.00 more, and on the 12th, Exhibit II shows sales amounting to \$68.14, and in Exhibit I it is on the date of the 18th of January, and it is shown as \$168.14; and for January in the bankrupt's book he added \$481.98 purporting to be sales of more than is reported in Exhibit II.

On the 6th of February the Exhibit II shows \$31.71, and Exhibit I, under date of the 17th, shows \$37.71; and the 15th, in Exhibit II, the sales show \$48.42, and in Exhibit No. I it calls for \$148.12. That is all.

March checks out all right; it is only until March 7th. It is impossible for me to ascertain without the bankrupt's cancelled checks what became of the bank-

(Testimony of Samuel Namson.)

rupt's money taken in in his store, because it would not be correct, because these books are kept only up until March 13th and when we add that it was of May 2nd here that they were running the business. Since March, we could not tell without any stubs or cancelled checks.

CROSS EXAMINATION.

It is a fact there is an entry in the books for each check was that given out up until March 13th when the bankrupt made an assignment to the Board of Trade.

“Q. And up until March 13th, throughout all of his books there are entries there showing the amount of each deposit made in the bank, and the amount of each withdrawal from the bank; is not that true?

A. No, it shows daily sales, merchandise received, general expenses, and paid bills, but there is no number of the checks, or checks, like you have in these old books; it only shows the amount paid.

This book, Exhibit I is made out in the handwriting of the bankrupt and purports to be a transcript or a copy of what appeared in Exhibit II for two months and seven days as far as the sales are concerned and nothing else. Up until the time the bookkeeper left in the month of February, the books seem to have been regularly kept, but I can't say they are accurate without checking them but they were regularly kept. They did disclose the condition of the business up until March 13, 1928. I have not talked to the bankrupt. I realize that it is poor bookkeeping. I used as a basis for my figures in arriving at the discrepancy the figures given me by the Board of Trade when they took over the

(Testimony of Samuel Namson.)

business and obtained an inventory. I had the inventory but I did not check the inventory. I took the Board of Trade's figures. I did not assist in taking that inventory. I do not know whether it is right or wrong.

“Q. You don't know whether or not those figures on which you based your discrepancy are right or wrong, that is, the figures given to you by the Board of Trade?”

A. Well, there are only two figures there.

Q. And what are those?

A. Cash on hand, \$27.57; and the merchandise inventory—the fixtures we take at the same value as he has shown in his books—so, that there are only two figures there; cash on hand, \$27.57, and the merchandise inventory.

Q. Assuming that the figures given to you by the Board of Trade, “Merchandise inventory, \$18,115.47,” are not correct, then your figures as to the deficit are not correct; is that right?

A. Exactly.”

I did not check the sales which the bankrupt reported after he started to keep the books with the sales of merchandise of previous years. I have taken only the figures as they appear in this book and have compared them with the figures he copied and the figures he copied are wrong.

“Q. You do know whether or not the sales, as reported by the bankrupt for that month of as reported by the bankrupt for that portion of the month of March, or that portion of the month of

(Testimony of Samuel Namson.)

April, corresponded, approximately, with the sales in the same month of the preceding year?

A. No, I do not. I don't know that; we ignored his book entirely, as wrong; it did not check out and we did not take it as any authority at all.

In basing the inventory, or the discrepancy, I took the inventory as of the first of the year and the inventory was taken by the Board of Trade, and then deducted the difference. I got my figures for the inventory of January 1, 1928, right here from this book, the ledger, Trustees's Exhibit III. The figure was \$8600. It was carried over from January 1st, credited to profit and loss. This is practically a trial balance of this book as of the first of the year. You can see that even from this book. This book shows a balance of cash on hand of \$307.85.

"Q. And that is not correct, because it only shows \$307.85, and these books show cash amounting to \$387.85?

A. No, the difference is about \$50.00, "Cash on hand." Here is 'Petty cash, \$50.00', and that is different."

This book made up by the bankrupt does not coincide with this because in the first place the bankrupt's idea was to show sales \$3200 for January, but he did not get that much; and he had \$387.85 on hand at the beginning of January, and added \$481.78 to it, and he just completed his sales right here.

"Q. Taking the January account in Trustee's Exhibit I, which is marked at the top '1928 sales,'

(Testimony of Samuel Namson.)

and immediately below that, in plain writing, is shown balance on hand or bank cash, January 1, 1928, \$307.85; is that correct?

A. Yes sir, and he adds it into the sales, so that obviously on its face, that amount does not represent sales, but represents money on hand.

Q. Plus sales?

A. Yes, sir.

Q. And it shows an error upon its face?

A. Yes, sir."

Up until the bookkeeper left, the books were kept under a regular double entry system. They were balanced and kept in balance all the time.

"Q. And they reflect, do they not, the usual and ordinary transactions all the way through from the time the books were opened in 1924?

A. Well, I didn't go back as far back as that, but it shows a regular set of books were kept."

Since that time the other book is only a single entry with just a record of transactions that occurred without the detailed information.

Yes, is a record here of merchandise purchased, of the merchandise received, general expenses, bills paid, and daily sales and an inventory.

"Q. This general expense account shows the amounts paid out under that head, from February 1st, by Abe Silverstein amounting to three hundred odd dollars?

MR. TOBIN: In view of the bankrupt's admission that he destroyed his checks and bank

(Testimony of Abe Silverstein.)

statements, anything in this book constitutes a self-serving declaration without any substantial record to back it up, and that line of questioning is calling for self-serving declarations of the bankrupt.

MR. GETZ: Any books are self-serving.

THE SPECIAL MASTER: The objection is sustained."

ABE SILVERSTEIN,

the bankrupt, was thereupon recalled by the trustee, and having been previously sworn by the Special Master, testified as follows:

DIRECT EXAMINATION

BY MR. TOBIN: Q. You applied to the creditors represented by the Los Angeles Wholesalers Board of Trade, for an extension of time, did you not, in March, 1928, an extension agreement?

A. Well, Mr. Dave Norton, from Klein-Norton Company, told me when I told him I was not doing any business and couldn't pay my bills, he said to me that he would try to get business for me from time to time, so that I would be able to stay in business.

Q. You did apply to the Los Angeles Wholesalers' Board of Trade for an extension?

A. Not that I know of; maybe Mr. Norton did."

I was up there on that extension proposition. At that time I presented to the creditors and to the Los Angeles Wholesalers' Board of Trade this book, Trustee's Exhibit I, as being a true book of my business affairs.

(Testimony of Abe Silverstein.)

“Q. And in that book you entered your sales as of an increased amount each day during a number of different days, of \$100.00 over what the sales actually were?”

A. What do you mean?

Q. For instance, a \$30.00 item was raised to \$130.00.

A. You mean, that I sold more?

Q. Yes, you raised it to show more?

A. If I did that I have put the money in, but there may have been a mistake by the bookkeeper. If I do show more cash, why, I have put that money in the bank.

Q. Now, you reported or represented to these creditors that this book, our Exhibit No. 1, contains a true account of your cash sales?

A. Yes, if I received that from sales I put the money in the bank.

Q. But you raised quite a number of them above what they actually were, as pointed out by Mr. Namson to the court a moment ago.

A. Well I—

THE SPECIAL MASTER: Answer it ‘Yes’ or ‘No.’

A. I can’t say, for the reason that I was waiting on the trade. I guess I didn’t raise it according to the figures.”

Examining the entry of January 4th, \$281.98, I made a sale and I put that money in the bank whatever it figures more than this, I must have took in. The

(Testimony of Abe Silverstein.)

bookkeeper was keeping this set of books in January, 1928.

“Q. And you kept this set?”

A. I put in the bank the money, whatever it is, according to this book, and I paid out from that book.

Q. What were you doing with two sets of books?

A. I was not, I only had one set.

Q. You and your brothers, at the time you were up there before the Board of Trade, made an offer to the creditors of fifty cents on the dollars, did you not?

“A. No, I did not; my brother made an offer of ninety cents on the dollar.”

My brother offered ninety cents on the dollar and the creditors would not accept it because he didn't have all cash, but wanted to put up property, and they wanted all the money, and I wanted to go back in business. I don't know whether the first offer was fifty cents on the dollar, because I made no offer, and I told Mr. Johnson that I had nothing to do, that I must go to work.

“Q. The first offer was fifty cents on the dollar, cash, and later, ninety cents on the dollar, over a period of six years?”

A. No, it was to be paid \$4,000 on delivery of the stock and \$1,000 each month, and if I cannot pay it from the business, then my brothers will help pay it from their business, to pay it off and it would take about a year that way.”

(Testimony of Abe Silverstein.)

CROSS-EXAMINATION

BY MR. GETZ:

I had nothing to do with that offer, not a thing, because I talked with Mr. Johnson and he says: "Have you anything?" I says: "No, I haven't a nickel. I don't know whether there was an offer on the part of my brother to purchase the goods from the creditors for himself or for me. He tried to buy it right along; as he had been buying for the firm. No offer was made to the Board of Trade on my behalf that I know of. Only that my brother would buy it and give me a chance. He bought a stock about two weeks ago, near Pasadena, from the Board of Trade, and he put me to work there.

"Q. The Board of Trade understood all of that?

A. Sure, they know that he has been buyer of merchandise and a speculator on the Board of Trade for years."

"Q. I think you were asked one question that you misunderstood, or I misunderstood you, and I think the Court did, why you kept two sets of books, and as I understand it, the Trustee's Exhibit I was not opened up until after the bookkeeper was discharged?

"A. That is right."

During all the time that the bookkeeper was there these three books, numbered as Exhibits II, III and IV were the only books of my business. After I discharged my bookkeeper, I was not able to carry on with this set of books, that he kept, because I haven't gone through

(Testimony of Abe Silverstein.)

school, and that is why I made it plain so as to be able to read it. I could tell when I took in \$100 and would know when I paid out \$75.00 from the store. I do not know enough of bookkeeping to make entries in a set of books, such as I had there at that time. When the bookkeeper left I started keeping this book, Trustee's Exhibit I. Yes, I tried to put down all of the things which have occurred since the first of the year, so as to be able to tell myself and be able to ascertain to the best of my ability what my business was doing. That is right. In making up this account of sales, I used the bank deposits. I deposited every morning the following morning the day's receipts of the day before. Yes, sir, it had been my practice to deposit all money received. But if I needed something I was drawing out, like I draw here—

“Q. Just a moment. Did your bank deposits check with your sales, excepting where you drew out for petty cash or for your own drawings?

A. I never drew any petty cash, but everything I drew was through the bank, for salary and for help, and on the first of the month, when I got my bank statement, I checked that with the book and seen that everything was correct, and then destroyed the checks.

Q. Then, as I understand it, you say your sales checked with your deposits in bank?

A. Yes sir, except—

Q. Except what you paid as petty cash?

A. Yes, sir.

(Testimony of Abe Silverstein.)

“Q. And in making up this book, you made that book from the sales which you actually made and money actually received?

A. Yes sir.

Q. And these books reflect the actual amount you did receive from your sales?

A. Yes sir.

Q. And in making sales you sometimes sold odds and ends in job lots?

A. Yes sir, and undesirable merchandise, faded and poor stock.

Q. And is it possible that the bookkeeper did not get those?

A. Many times he did not get them, because he came in once a month and there were a lot of figures that he didn't get.

Q. You kept your stubs, bills, receipts, and slips and he entered from them once a month?

A. Yes, and sometimes twice a month.

Q. BY THE SPECIAL MASTER: You sold considerable goods in job lots just prior to bankruptcy?

A. Yes, sir.

Q. BY MR. GETZ: But you were in the retail business, ordinarily?

A. Yes sir, but I sold only the odds and ends, and the faded out merchandise from the windows, and small sizes and odds and ends.”

Ever since I have been in business I have done that because you always have to do that so as to keep a clean stock and keep the stock up. I did not sell any to my

(Testimony of Abe Silverstein.)

brothers. My business was an army and navy store. I had to sell goods at lower prices than the stores downtown because they expect it to be cheaper, being that kind of a store. Yes, sir, in order to buy goods to sell at that cheaper price, it was necessary for me to buy larger quantities. Yes, sir, I was required to buy all of that merchandise that I bought in large quantities, I was obliged to buy all that they offered to me in order to get it at that low price. Yes, sir, because those lots of merchandise often included merchandise that was not salable in my store.

“Q. In destroying your checks did you first check them back with your books?

MR. TOBIN: Objected to on the ground that it is immaterial and not binding on the Trustee.

THE SPECIAL MASTER: The objection is overruled, but it will be limited. Let him answer it, but I will limit it.

A. Yes, sir.

Q. And was each check listed in the book?

A. Yes, and to whom I paid it, you see.

Q. And they corresponded?

A. Yes sir, and then I destroyed them.

MR. TOBIN: Is this a part of the defense?

MR. GETZ: Yes.

MR. TOBIN: Then, let the record show that I had rested.

QUESTIONS BY MR. GETZ (Resuming)”

At the time of this conversation with Mr. Norton, Mr. Norton was then my largest creditor. I had been doing business with him for a long time.

(Testimony of Abe Silverstein.)

“THE SPECIAL MASTER: How many Specifications of Objection have you?”

MR. TOBIN: Three; failure to keep proper books of account; destruction of his checks and records; and failure to account for a little more than \$8,000 worth of merchandise.

THE SPECIAL MASTER: If you have finished, you may confine yourself to failure to keep books.

MR. TOBIN: How about the destruction of his checks?

THE SPECIAL MASTER: Proceed for the present.

Q. BY MR. GETZ: What happened after you let your bookkeeper go?

A. Yes I let him go.

Q. And tell the Court what happened regarding your books, what you did after letting your bookkeeper go.

A. I was waiting on the trade, and I went to work and made a book showing the balance in the bank, and I entered it as cash, a cash sale, and entered all the sales, and at the end of the month I added them all together, and I paid the creditors after that as much as I could, and I had to pay my help; and I had to use for my household, because I had a sick woman in the hospital and it took more money than it did before, and every dollar I took was on the book.”

Yes, I went back and tried to enter all of my transactions since the first of the year in this single entry

(Testimony of Abe Silverstein.)

book. Yes, sir, the reason for that was because I was not able to understand the double entry books. Yes sir, and because I was not able to do those books. Yes sir, I was able to determine from the book that I kept the condition of my business; what I was doing and the amount of my money that I was taking in and paying out for merchandise and expenses, and I had a special page for each one of those, each month. Yes, that book reflects all the transactions of my business. Yes sir, it is as truthfully as I know how to put them down. Yes sir, to the best of my ability I did set them out. Yes sir, I consider that book sufficient to keep the details of my business. Yes sir, I kept the books myself in the store there while I was waiting on the trade. I had a double store and one man stood on one side and I stood on the other side. Yes sir, the salesmen and credit men from the wholesalers came and called on me there. Yes sir, they saw me keeping this book. Yes sir, at the time I went up to the Board of Trade it was not to secure an extension but was in response to a suggestion that I make an assignment to the Board of Trade. No sir, I did not apply for any extension up to that time. No sir, at that time I did not tell them that I had all of these books and that they were intact. Mr. Johnson came to the store. Yes sir, I did show him all of these books. If you will allow me to talk I can tell you.

“Q. No, just answer the questions as I ask them. Were all those books in your place of business?”

A. No, they were at home: I only had one book in the store; I took all the figures out to my home,

(Testimony of Abe Silverstein.)

in order to enter them in that book, to keep it straight in that one book, and I never used the other books then.”

Yes sir, when the matter came up before the Board of Trade I immediately turned those books over to the Board of Trade. Yes sir, I instructed my attorney to allow the Board of Trade to look over the books. No sir, I did not attempt to conceal anything.

CROSS-EXAMINATION

BY MR. TOBIN:

“Q. There were no cancelled checks turned over after December, 1928?

A. No.”

Both sides rested.

BY THE SPECIAL MASTER: “Gentlemen, the Bankruptcy Act provides that the failure to keep certain books and records shall be grounds to deny the bankrupt’s discharge, and the fact that these checks have all been religiously destroyed, and that there is a loss of approximately \$8,000, is certainly not explained satisfactory.

MR. GETZ: I want to go into that part of it.

THE SPECIAL MASTER: I certainly will have to find that he is not entitled to a discharge on that.

MR. GETZ: That is on the set of books

THE SPECIAL MASTER: That is what I am finding on.

(Testimony of Abe Silverstein.)

MR. GETZ: But should not we have an opportunity to explain that discrepancy?

THE SPECIAL MASTER: You had an opportunity to explain that; I told you to confine yourself to that one specification, and I think you went into that as thoroughly as you could.

MR. GETZ: No, I did not express myself on that. You will find that the inventory taken by the Board of Trade is much less than what he turned over, and there is no real discrepancy.

THE SPECIAL MASTER: I understand that would be his statement.

MR. TOBIN: Section 14 B covers the whole thing.

MR. GETZ: I would like to have it continued and allow me to bring in evidence on that, and allow me to bring in evidence to substantiate those things which we contend.

MR. TOBIN: There was no justification for destroying the checks.

THE SPECIAL MASTER: He scrupulously destroyed his checks.

MR. GETZ: I want to recall the bankrupt and ask him a few more questions at this time.

THE SPECIAL MASTER: You may ask him and he may answer them from where he sits.

Q. BY MR. GETZ: Mr. Silverstein, did you make an inventory, or assist in making an inventory of the merchandise after it had been turned over to the Board of Trade?"

(Testimony of Abe Silverstein.)

Yes I checked back on the Board of Trade that merchandise they sold to that fellow Sam Stein. He bought the merchandise from the board of Trade. I found a lot of differensce. I found 19½ dozen B. V. Ds. They were inventoried at 9½ dozen. Yes, I turned over to the Board of Trade 19½ dozen. Yes that would be a shortage of 10 dozen at \$11.75, that would be \$117.50.

“Q. Did you find anything else?”

A. Yes sir, shoes and everything, and the fellow who bought them, I showed that to him and he says: “You keep quiet, you are being paid for your help.”

“Q. Who was it sold to?”

A. A fellow that is a speculator.”

RE-CROSS EXAMINATION

BY MR. TOBIN:

“Q. Your brother offered to buy it?”

A. Yes sir, he offered \$19,000 for it, and they would not take it, because he didn't want to pay all cash.”

The Bankrupt rests.

“MR. GETZ: This case paid a pretty fair dividend.

THE SPECIAL MASTER: I want to get a report from the Trustee in this matter before proceeding any farther. The matter will be continued for a short time, and I will then take it up again.”

(Testimony of C. M. Carson)

PROCEEDINGS HAD BEFORE HONORABLE
JAMES L. IRWIN, SITTING AS SPECIAL
MASTER, AT LOS ANGELES, CALIFORNIA,
MARCH 28, 1929.

At the request of Mr. Getz all witnesses except the
one on the stand were excluded from the Courtroom.

BY THE SPECIAL MASTER:

C. M. CARSON

Called as a witness for and on behalf of the Trustee,
and having been first duly sworn by the Special Master,
testified as follows:

DIRECT EXAMINATION

BY MR. TOBIN:

My name is C. M. Carson. I am an adjuster for the
Los Angeles Wholesalers' Board of Trade. I have been
such adjuster for about eighteen years. During that
time I have inventoried perhaps 1800 stocks, that is
100 a year at least. I am familiar with stocks and
values of them of the nature of Abe Silverstein's stock.
Yes, I did take an inventory of Abe Silverstein's stock.
We began taking it on May 14, 1928. It took us around
three or four days to take it. It was taken at cost as
nearly as we could obtain it, by taking the inventory
found there and the cost marks on the goods. Yes,
the cost mark was Abe Silverstein's cost mark which
we got from him. I am sorry to say that it is not on
here. Mr. Eaton gave it to us and he was the assistant
in the store at that time.

(Testimony of C. M. Carson)

“A. The inventory was taken from cost marks and invoices in the store there?

A. In most every instance, yes sir.

Q. Have you a copy of that inventory with you? Just a moment.

MR. TOBIN: Does the Court want the inventory in evidence?

THE SPECIAL MASTER: Not except one item, if it is available.”

In taking the inventory we first got the stock lined up as well as we could, and it was pretty well lined up to begin with, it was an awfully nice stock, and we counted the items in the stock, and if we found a certain quantity of one item, for instance, if we found ten dozen of a certain number of overalls, we put a ticket on it and stated the quantity, stock number and price. I speak of it that way, because later on we would find something with a price that we did not have at that time and could not decide on the cost mark or from the cost mark, and we later found the original invoice; and we also used the judgment of Mr. Eaton, because he could tell us the cost mark better than we could get it ourselves.

“Q. The bankrupt made a charge here the other day that you people put down 19 dozen B. V. Ds. as 9 dozen; Will you tell the Court whether or not that was done?

A. Well, I can't believe,—that is, I feel as though the bankrupt was mistaken.

MR. GETZ: I move to strike it out.

(Testimony of C. M. Carson)

THE SPECIAL MASTER: Yes.

Q. MR. TOBIN: What was actually done?

MR GETZ: If he knows.

A. I am looking at this (a paper), I found only one item of B. V. Ds. on the way down here, and as I recall, it stated only 4 dozen B. V. Ds.

Q. BY THE SPECIAL MASTER: (To the bankrupt) Was that B. V. Ds.?

A. (BY THE BANKRUPT): Genuine B. V. Ds., yes sir.

THE WITNESS (CARSON resuming) I find one item of B. V. Ds. unions, 4 dozen. I do not see where the other numbers are. Was it the two-piece garments that you refer to?

THE SPECIAL MASTER: There was a statement handed up here or introduced at the last hearing, with quite a lengthy statement, with close lines, was that introduced as an exhibit, or was it withdrawn?

MR. TOBIN: That was the auditor's report.

THE SPECIAL MASTER: That is what I want.

THE WITNESS: I am mistaken; I find another delivery of B. V. Ds., 10½ dozen, making 14½ dozen in all on this inventory."

I wrote up that inventory. Yes, it was written up at the time it was taken, after a count of all of the merchandise in the store. We first counted it and made tags and put on it, and if my memory serves me right Mr. Eaton made the costs.

(Testimony of C. M. Carson)

“Q. BY THE SPECIAL MASTER: Did I understand you to say that it was a well kept stock?

A. I meant to say it was a remarkably nice, clean stock of merchandise.”

There was but very little out of date merchandise on hand there. It looked as if the stock had been much smaller and had been increased very rapidly, during a short time before we took possession.

CROSS-EXAMINATION

BY MR. GETZ:

I was assisted in taking that inventory by Mr. Kaufman, Mr. Palmer and Mr. Eaton. Mr. Kaufman, Mr. Palmer and myself are all employed by the Los Angeles Wholesalers' Board of Trade. Mr. Silverstein was there during quite a bit of the time, in and out during the two or three days that we took the inventory there. He answered questions that we asked him in regard to the cost. My practice there was first to go through the stock and sort it out by counting the actual number of articles. The first thing I did was to go to the shelves and count the number of articles there and in a particular compartment or all under one job number, and then put a ticket on that showing the number on hand, the number and amount of that particular articles, or under that particular job. On that ticket I put the cost mark and other data. No, this stock was exactly arranged in compartments like the shoes of one job number in one compartment, and the shoes of another job number in another. Naturally a merchant goes through his stock and gets the stock mixed up in waiting on the trade, and we tried to get the stock numbers all together and make

(Testimony of C. M. Carson)

only one entry in writing it in. Yes this merchandise was all there in an orderly array when we came there and was in fairly good condition.

I wrote the inventory down, and Mr. Eaton called it from the tickets, I believe, and I endeavored in every case, myself to see that ticket, to see that Mr. Eaton called out the right quantities. A great deal of the merchandise was in shelves. These shelves did not reach the ceiling, but I think they were up higher than a man's head. I was walking right along, following him around. In some cases I laid my book on the table or on the shelf to write and in some cases I did not. Mr. Kaufman cleaned up and swept out and did that type of work after we had finished the work we wanted him to do.

“Q. As a matter of fact, you all assisted in the taking of that inventory, did you not?”

A. It was just as I have stated.”

No I am not positive that Mr. Kaufman called off some of the articles. Mr. Eaton is the man who called off most of the articles to me. I would not say for sure he called off the item of B. V. Ds. to me, but I think it was Mr. Eaton.

“Q. You only think that, but Mr. Kaufman may have?”

A. He might have.

Q. Did you look at the ticket on the B. V. Ds.?

A. As far as that is concerned, that was a year ago, and I might have overlooked one, I don't know.”

(Testimony of C. M. Carson)

If I was not able to see from where I stood, if I had not been able to see the figures from where I stood, I climbed up to check those that were on the shelves above me or on top of the shelves. I did, or on one of the others—

“Q. Are you ready to testify positively in every instance and in every ticket you used in that store, you inspected it before you wrote it down

A. I think I did, I intended to do that.”

There were two reasons for one man calling them off, even though I examined them before I wrote the amounts down. One reason was there was some items that we were not sure of cost marks on and we knew that Mr. Eaton was familiar with them and I had checked with him so many times that I felt he was acting in good faith and endeavoring to help us out and I allowed him to decipher that cost mark. The other reason was this, that is, you can readily see that it is an advantage to have two men doing this type of work, because I could not get away up there and stoop around and write in my book, after I found it, as well as I could by having him call it off; but I did put it down in the book.

“Q. The cost mark was put on all of it, and that was done at a different time to the time that you wrote it down in the book?

A. I think that is right, and the man called it off.”

Yes, making out the tickets was the first thing I did. I marked every article of merchandise in that store at first and placed it with the ticket or job number on it.

(Testimony of C. M. Carson)

Yes, we first made the ticket and put the job number on the ticket, and on that ticket I also showed the cost and the stock number. On some of it we marked the cost on the ticket before we wrote up the inventory at all, and on some of it we did not know the cost at all. After that was done, one or two men went along the shelves and took out the tickets and called them off and I wrote in the book the amount that he called off. All of this is in my hand writing, practically everything. This is the original that was taken and written up there on that day or at that time. The quantity is written on the left hand side, the articles is written under the description, and the stock number is on the right.

“Q. And this is the price on the article?”

A. In this case. Sometimes it is by the dozen, and it all depends on how it comes.”

The totals are carried out in the last column on the right. This word here, “rear shelving,” is what was on the top and this was on the shelves below it. We tried to locate it so that it could be conveniently rechecked when sold. I remember the shoes were originally at the rear, on the rear shelf.

“Q. Were there any in front?”

MR. TOBIN: I don't see the materiality of all of this; they have charged the Board of Trade with having sloughed off a certain quantity of B. V. Ds.

THE SPECIAL MASTER: Yes, it is all immaterial.

MR. GETZ: We are not limiting ourselves to that, we are not limiting ourselves to the B. V. Ds.

(Testimony of B. A. Jacobs.)

THE SPECIAL MASTER: You have made a direct charge of certain things being short.

MR. GETZ: Unless the Court is limiting us to the B. V. Ds.

THE SPECIAL MASTER: Unless you have some particular items.

MR. GETZ: Yes, we have.

MR. TOBIN: He said several hundred dollars worth of stuff.

Q. BY MR. GETZ: Do you know who bought this merchandise from the Board of Trade?

A. I heard yesterday that it was Mr. Stein.

Q. Did Mr. Kaufman say anything to you about his buying it in?

MR. TOBIN: We object to it on the ground that it is immaterial and not proper cross-examination.

THE SPECIAL MASTER: The objection sustained.

B. A. JACOBS

Called as a witness for and on behalf of the Trustee, and having been first duly sworn by the Special Master, testified as follows:

DIRECT EXAMINATION

BY MR. TOBIN:

My name is B. A. Jacobs. I am a licensed auctioneer. I have been an auctioneer about four or five years. I am a member of the Auctioneers' Organization here in Los Angeles. I was in the employ of the Los Angeles Wholesalers' Board of Trade during the years 1927-28. I sold the stock of Abe Silverstein.

(Testimony of B. A. Jacobs.)

First we went about sending out circulars, probably 750 to 1000 notices of sale to be made on a certain date of this stock. It was to be sold to the highest bidder, subject to the confirmation of the creditors, and I think it was to be held at the hour of two o'clock in the afternoon of that date, and it was open for inspection for about two days before that, and at about two o'clock I got on the block, and there were fifty to sixty people there, as nearly as I can recall, and we received about twenty-nine bids in all.

I first offered the fixtures and then I offered the merchandise and then I bulked them and offered the entire thing in bulk, just as it stood. I got a lump bid for the stock and fixtures. The lowest bid was \$13,500 for it in lump and the highest bid was \$14,000 and was made by Mr. Stein.

“Q. Was there any bid on a percentage basis, like seventy-five cents on the dollar?

A. No.

Q. It was just a straight bid as it stood?

A. Yes at \$14,000.”

CROSS-EXAMINATION

BY MR. GETZ:

Mr. Sugarman bid \$13,975. When we put up a straight merchandise bid it was sixty cents on the dollar. Stein's bid for the stock was nothing at all. Stein's total bid was \$14,000.

“Q. Was it figured on the basis of seventy-three to Seventy-five cents on the dollar?

A. It was figured on the basis of a lump sum for whatever was there.

(Testimony of B. A. Jacobs.)

“Q. And that was not subject to any recheck?

A. No, with the exception that we always tell the purchaser that everything is there, both the quality and the quantity.

Q. But if there is more there than the quantity shown, the purchaser would get it?

A. No, not unless he paid the same pro rata for it.

Q. How do you know what it was?

A. You can figure it, it is usually only a matter of figures.”

Yes sir, Mr. Stein absolutely was informed that. He has bought many stocks, ten to twenty in the last fifteen years and everybody is aware of that fact, that we would not sell them \$18,000 worth of merchandise for \$14,000, or if there was \$20,000 we would not sell it for \$16,000. We got a cashier's check as a deposit. I don't know how much, that was left to one of my men. When I got off the block, I saw that there was a cashier's check in my man's hands.

“Q. He merely made a deposit of ten per cent, according to the terms of sale, ten per cent down, and the balance to be paid as soon as the inventory was checked?

A. That is generally the way; of course, with Stein or Sugarman their word is as good as a check.

MR. TOBIN: We will prove the checking of the inventory.

THE SPECIAL MASTER: It is not material; I had expected the bankrupt to prove some shortage.

(Testimony of B. Palmer.)

MR. GETZ: I am merely getting at some things here.

THE SPECIAL MASTER: Have you the party here who checked it, or that can testify as to the number of dozen of B. V. Ds.

MR. TOBIN: Yes."

B. PALMER

Called as a witness for and on behalf of the Trustee, and having been first duly sworn by the Special Master, testified as follows:

My name is B. Palmer. I am an adjuster for the Los Angeles Wholesalers' Board of Trade. I saw the inventory that Mr. Carson had here a while ago, of this stock of merchandise of Abe Silverstein. The stock was checked with the purchaser from the beginning to end after the sale was made. In checking the stock I took the inventory and called off so many dozen of whatever the articles were and the purchaser would count it and satisfy himself that it was there. There was a slight discrepancy in the amount of stock amounting to about ten or twelve dollars.

CROSS-EXAMINATION

BY MR. GETZ:

I don't remember anyone else being there at the time it was rechecked, except the man who was checking with me, the partner of Mr. Stein. I don't recall that Mr. Kaufman was there.

"Q. Do you recall that you were checking with one of the partners and that Mr. Kaufman was checking with the other

(Testimony of J. D. Kaufman.)

A. No sir, absolutely not.

Q. That is not true?

A. That is not the truth."

They would count the articles if there was any question about it at all. The only place there was any difference was where articles were short. There was only ten or twelve dollars difference and I don't remember whether that was in favor of the purchaser or in favor of the bankrupt. I checked part of the counting. If they said "Okay" I checked it off. When I called the item I looked at that item myself; I did not count it, but I saw it.

"Q. If there were articles not on the inventory, you had no way of checking that, did you?

A. If it was of any amount I certainly did; if there were only two or three articles, why, naturally, I did not.

RE-DIRECT EXAMINATION

BY MR. TOBIN:

"Q. If there were two or three dozen, or ten dozen B. V. Ds., you did?

A. Yes sir, absolutely, because that would have been so large a bulk that I would have seen it and would have to do that, because it would have attracted my attention.

J. D. KAUFMAN

Called as a witness for and on behalf of the Trustee, and having been first duly sworn by the Special Master, testified as follows:

(Testimony of J. D. Kaufman.)

My name is J. D. Kaufman. I worked for Mr. Stein, the purchaser of this stock. I have seen this inventory, a carbon copy of which is exhibited. I would say that I have seen it about seventy-five or a hundred times. When I went to work the first day for Mr. Stein and Mr. Krause, we always referred to the inventory.

“Q. Did you ever check that inventory?”

A. Sometimes.

Q. Did you ever find any articles of merchandise in the store that were not shown on that inventory?

A. Not to my knowledge.

MR. GETZ: I subpoenaed this witness.

THE SPECIAL MASTER: Proceed, then.

DIRECT EXAMINATION,

BY MR. GETZ:”

I assisted the Board of Trade in taking the inventory. I was working for the Board of Trade at that time in taking the inventory. I took the inventory of the shoes. After they had been marked and the tickets placed on them, I called them off to a man who wrote them up and the footwear was about \$2,000 possibly and there was some shoes that I thought was too high and I called Mr. Carson’s attention to it and we adjusted that then. I called the articles off to Mr. Carson and he wrote them down. I don’t remember who else was there at that time. Stein and Krause own that store now. I cannot give you their addresses, but I can only give you the names. They are on New Hampshire Street in the telephone book. Mr. Stein is on New Hampshire

(Testimony of Abe Silverstein.)

Street. I think Mr. Krause moved, but you can look him up, you can locate him at the corner of Second and Broadway. The lease is in my name. I am conducting that same store. I worked together with Mr. Silverstein and we ran a sale there and afterwards I became manager of that store. I am buying the store, and until January 1, 1929, I worked for wages. I took the lease in about September, because I had the intention sometime, to buy out the store and I urged my employer to get a lease there. I did not take the lease in my name immediately after the goods were sold, in this case. I did not take it the next day or in two or three days. Stein & Krause were renting it from Mrs. W. H. Wakefield. It was about three months after, as well as I recall, July, August and September.

“Q. Where do you make your payments?

A. To whom?

Q. That you are paying on the stock, you say you are buying it.

MR. TOBIN: Objected to on the grounds it is incompetent, irrelevant and immaterial.

THE SPECIAL MASTER: Yes, that objection will be sustained.”

At this time the Trustee rested.

ABE SILVERSTEIN

The Bankrupt, was thereupon called for and on his own behalf and having been previously sworn by the Special Master, testified as follows:

(Testimony of Abe Silverstein.)

DIRECT EXAMINATION

BY MR. GETZ:

I was present at the time the inventory was taken by the I dropped in during the evening and morning and would stay half an hour and then go away. I dropped in three or four times a day to answer whatever they asked me.

“Q. When you were there did you see the practice they followed in taking the inventory?”

A. No.

Q. Did you see how they did it?

A. Yes, I saw that.”

One fellow put the tickets on it and one stayed on the top shelf and called the items, so many of whatever it was, and a fellow would stay down on the floor and write. He was two or three feet away from him, but if he is by the show case, he leans on it. The shelving is pretty high, about four fingers higher than my head. The shoes were back there somewhere on the right hand side near the back. They were on the shelves. They were in compartments, up to the top of the shelves. They placed each lot or job number in a compartment by itself. They were supposed to be compartments of fourteen pairs of shoes each, and each one was supposed to carry the same amount, regardless of whether it was the same size or the same price or not. If the shoes cost \$4.00 a pair, there would be 14 pairs in a compartment. When they took the inventory they gathered all of the items of like cost together in a certain compartment and placed tickets on them. Yes sir, like so

(Testimony of Abe Silverstein.)

many suits of B. V. Ds. I was in the store when it was sold out. I was there when Stein checked over the inventory and he gave me the job of helping check over and I checked with the Board of Trade man. Yes sir, it was the man that was there from the Board of Trade that morning. His name was Mr. Palmer.

“Q. And who else?”

A. Leo Krause, a partner of Mr. Stein.”

It was about 10:30 or 11:00 o'clock. This inventory was then and Mr. Palmer had it, until it was checked, and then I turned it over to Mr. Stein. There was one like this, but I think they were copies. There was a carbon copy there besides the original. I was rechecking, calling back the numbers and amounts of the merchandise, like if Mr. Palmer would say: “10½ dozen B. V. Ds.”, I would go and count the boxes, and each box contains a half dozen, and I found thirty-nine boxes, and that would be 19½ dozen, and I said to Krause: “You see what you got?” And he said “All right” and we kept on going for some two or three items. I can find that item there now. That item is on page 14, 10½ dozen union suits, B. V. Ds., price \$11.75 per dozen. 10½ is the quantity, 10½ dozen. Yes sir, Mr. Palmer first called 10½ and then I counted the boxes to recheck that. That was the only way I could recheck it and I counted them and there were only 39 boxes and there is a half dozen in a box and that should have been 19½ dozen. Mr. Krause was right next to me then. I said, “You got about 9½ dozen that they didn't count.” And he says “All right.”

(Testimony of Abe Silverstein.)

After a while we came to a compartment of shoes near the back which was one lot of 11 pairs and next to it was 14 pairs, and they were not listed at all, they were all in the same row, but they were not called at all; and the next 14 were called, and right by it was only 3 pairs that were called. I can find that page on the inventory, that is Page 23, item 14, 3 shoes, Lot #590, \$6.15 a pair. They were Packard shoes in this compartment and next to it were 13 and 14 pairs, but they were not listed at all. Yes sir, I mean that next to the place *were* the 3 pairs were, there was a compartment containing 14 pairs of shoes that were not on this inventory and they ran \$3.90 a pair. I called Mr. Kraus' attention to it and he says: "Well, that is pretty good," He said to Mr. Palmer: "The inventory looks pretty good, let's figure up and I will give you a check," and he was satisfied and waited for Mr. Stein to come back in and bring the certified check. I did not do any more rechecking then. Mr. Krause said: "It looks all right to me, I am satisfied, and there is no use checking any more." I said: "You have got a lot of stuff that there is no checking on it." He said: "What is it your business? I am paying you for working here." I continued working there that day and the next day and Mr. Kaufman and four of us there in all. Mr. Kaufman came in the following morning and managed the store from that time on. I was there on the day that the inventory was checked and for four or five weeks thereafter. They would take the inventory and sit in the back and talk when I was up in front. I didn't get a chance to do any more checking.

(Testimony of Max Silverstein.)

“Q. Did anybody do it?”

A. Yes, Mr. Krause and Mr. Stein used to go and check every item you see.”

Yes, sometimes for certain items I was permitted to see the inventory after that time. No, I didn't check any more, but if they wanted to find a particular item, I looked up it. If there are any other discrepancies I have no means of knowing it. The fixtures are listed here in the total amount of \$917.30. I can't say exactly what they cost me, but about \$1,300.

CROSS-EXAMINATION

BY MR. TOBIN:

“Q. Did you ever go to the Board of Trade and tell them that Mr. Stein had gotten the best of them in this deal by over \$100?”

A. No sir.”

MAX SILVERSTEIN

Called as a witness for and on behalf of the Bankrupt, and having been first duly sworn by the Special Master, testified as follows:

DIRECT EXAMINATION

BY MR. GETZ:

My name is Max Silverstein. I am a brother of the bankrupt. I am engaged in the same line of business that he formerly was in. General merchandise business. I am familiar with the stock and fixtures he had at North Broadway. I recall when the Board of Trade offered to sell them. I had negotiations with the Board of Trade with reference to the purchase of the stock and fixtures. I made two different offers. The first

(Testimony of Max Silverstein.)

offer was something like sixty cents on the dollar for the merchandise, see; and they refused that, and then afterwards I talked it over with some of his creditors, the committee of creditors, you know, and the Chairman of the Committee; and as I understand, you know, originally, when Abe went there to talk over the stock they promised him to work out everything for him, but when they took him to the Board of Trade it was all finished, there was no extension to it, they took an assignment; and then I went to Mr. Norton and I sort of criticized him for handling the matter like he did, you know, and when he came out I said: "Well, what is the chance of doing something for Abe?" He has a family to look after, and how is the chance of buying the store back; I will guarantee the payments for the stock, and I will pay one hundred cents on the dollar for the stock and fixtures, that being about \$19,000." And I offered to give him an endorser, another brother of mine, who is a great deal more responsible than I am, and we were going to give them a few thousand dollars cash and about \$1,000 or \$500 or \$600 a month out of the proceeds of the business, and let Abe pay up as he was going along. Yes, this talk was with Mr. Norton, and he was chairman of the Creditors' Committee. Yes sir, he was satisfied and he said that was placed before the Board of Trade.

CROSS-EXAMINATION

BY MR. TOBIN:

No, I tried to pay one hundred cents on the dollar. Yes, I know that my brother Lought a large quantity of merchandise and put it in that store during the last

(Testimony of Max Silverstein.)

few months before going out of business. Yes, I went to the Board of Trade and tried to negotiate an extension for him. Yes sir, they refused. Yes sir, I then wanted to buy it on credit for him.

RE-DIRECT EXAMINATION

BY MR. GETZ:

No, I did not have anything to do with the negotiation of the extension, only to help out in the business. Yes sir, I did not come into it until the Board of Trade had taken it from him, then I tried to help him.

RE-CROSS EXAMINATION

BY MR. TOBIN:

No, I have not been trying to induce some of the creditors to drop the charges, that is, to drop the objections to his discharge since the objections were filed. I have not talked to any of his creditors at all.

Bankrupt rests.

Trustee rests.

BY THE SPECIAL MASTER: "Gentlemen, I am not at all in doubt about the findings of fact in this matter, but I am somewhat in doubt as to the conclusion to be arrived at from the findings.

At the time the petition in bankruptcy was filed the claims amounted to \$22,000.00. The inventory taken by the Board of Trade, which we will accept as correct, amounts to \$18,115.47 of merchandise and clear fixtures amounting to \$917.30, or a total of \$19,485.00, approximately, that being the value of his business at the time the Board of Trade took it over; and in addition to

of the property to the assignee; that may be a satisfactory explanation. Nevertheless, there is not much of a shrinkage. I have always been inclined to hold that the hearing of objections to a bankrupt's discharge is in the nature of a criminal proceeding, and that the bankrupt is entitled to the benefit of a reasonable doubt. I am perfectly frank to say that there is doubt existing in my mind. I will find that the books of the bankrupt were improperly kept, from a bookkeeping standpoint, but there is apparently no fraud in the case, and I am going to recommend the bankrupt's discharge, by resolving the doubt in his favor."

[Endorsed]: Service of the within Statement is hereby admitted this 21st day of June, 1929. D. M. Potter & A. J. Getz, attorney for Abe Silverstein, Bank. Lodged Jun. 21, 1929 atmin. past 5 o'clock, P. M. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy. Filed Jun 27, 1929 at 20 min. past 12 o'clock P. M. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy.

[TITLE OF COURT AND CAUSE.]

ORDER SETTLING STATEMENT OF FACT ON APPEAL.

The Statement of Facts on Appeal herein filed having been duly brought on for hearing before the undersigned Judge of the above named Court at his Courtroom in the Federal Building of Los Angeles, County, State of California, on the 27 day of June, 1929, at the hour of 10 o'clock A. M., of said date, and the Trustee appear-

ing by his attorney, W. T. Craig, (Thomas S. Tobin of counsel) and the bankrupt appearing by his attorneys Messrs. Potter & Getz, and the Court being *dully* advised in the premises, now therefore, it is

ORDERED, that the Statement of Facts herein filed, as amended, be, and the same hereby is, settled and approved.

DONE at Los Angeles, in the Southern District of California, this 27 day of June, 1929.

Wm. P. James

UNITED STATES DISTRICT JUDGE

[Endorsed]: Filed Jun. 27, 1929 at 20 min. past 12 o'clock P. M. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy.

[TITLE OF COURT AND CAUSE.]

PETITION FOR APPEAL.

TO THE HONORABLE WILLIAM P. JAMES,
JUDGE OF THE ABOVE NAMED COURT:

The undersigned Trustee in Bankruptcy for the Estate of Abe Silverstein, and the objector to his discharge in bankruptcy, conceiving himself aggrieved by the final order and decree of this Court entered on June 4, 1929, in the above entitled proceeding, confirming and approving the Finding of Fact, Conclusions of Law and Report of James L. Irwin, Esquire, Special Master, overruling the Exceptions of the undersigned Trustee and Objector to the same and granting the bankrupt a discharge in bankruptcy from his debts, hereby appeals

from said Order and Judgment to the United States Circuit Court for the Ninth Circuit for the reasons set forth in the Assignment of Errors herein filed, and he prays that said appeal be allowed and that Citation be issued as provided by law, and that a transcript of the Record, proceedings and documents upon which said Order and Decree was based, duly authenticated be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the rules of said Court in such cases made and provided.

DATED, at Los Angeles, in the Southern District of California, this 21st day of June, 1929.

Wm. H. Moore, Jr.,
 TRUSTEE IN BANKRUPTCY AND
 OBJECTOR.

W. T. Craig
 SOLICITOR FOR TRUSTEE AND
 OBJECTOR.

Thomas S. Tobin
 OF COUNSEL.

[TITLE OF COURT AND CAUSE.]

ASSIGNMENT OF ERRORS.

COMES now WM. H. MOORE, JR., Trustee in Bankruptcy for the Estate of the above named bankrupt and Objector herein, and files the following Assignment of Errors on appeal from Order of this Court dated June 4, 1929:

FIRST ASSIGNMENT OF ERROR.

That the United States District Court for the Southern District of California, Central Division erred in overruling Trustee's Exception I, reading as follows:

"The Trustee excepts to Finding of Fact II, that it is not true that said bankrupt, Abe Silverstein, while a bankrupt or otherwise, has failed to explain satisfactorily losses of assets or deficiency of assets to meet his liabilities amounting to the sum of \$8,188.46 or any other sum, for the reason that the audit made of the bankrupt's affairs by a certified public accountant shows a shrinkage between January 1, 1928, and March 12, 1928, amounting to the sum of \$8,188.46, and that said shrinkage is not explained by the bankrupt anywhere in the record."

SECOND ASSIGNMENT OF ERROR.

That the Court erred in overruling Trustee's Exception II, reading as follows:

"The Trustee excepts to the Master's Finding of Fact III as follows:

'That it is not true that the said bankrupt, Abe Silverstein, while a bankrupt or otherwise, or at all, concealed certain or any material or any records pertaining to his business and/or affairs from which his financial condition could be ascertained, and that it is not true that the said bankrupt at any time or at all since his adjudication in bankruptcy has concealed from his Trustee certain or any cancelled checks belonging to him. That the Special Master finds that it is true that at all times during the business career of the bankrupt it was the prac-

tice of the bankrupt to enter a memorandum of each check drawn in his regular books of account and upon the return of the cancelled checks from the bank to check the same with his books and after verifying the amounts to destroy the checks. That such practice was not a part of any scheme or intent whatsoever to conceal or destroy any information concerning his receipts or disbursements or with any wrongful intent whatsoever and that the same was done openly and with the knowledge of various creditors.'

"For the reason that the evidence shows that the bankrupt not only destroyed his cancelled checks, but also destroyed and mutilated his check stubs, check books, bank statements and all other records pertaining to his banking transactions, and for the further reason that any destruction of books or records from which a bankrupt's financial conditions and business transactions might be ascertained is a violation of Section 14 B of the Bankruptcy Act unless the acts were justified; That there is no justification of the bankrupt's acts in such destruction or mutilation of such records; That an individual case does not excuse a violation of the law, and that there is no evidence whatsoever to show that it was the bankrupt's custom to destroy his check books, check stubs, and all other records pertaining to his bank account.

"The Trustee especially excepts to this Finding for the reason that there is no evidence to justify such a Finding or to sustain the burden of proof imposed upon the bankrupt under Section 14 B 7 of the Bankruptcy Act of the United States."

THIRD ASSIGNMENT OF ERROR.

The Court erred in overruling Trustee's Exception III, reading as follows:

"The Trustee excepts to Finding IV as not justified by the evidence."

FOURTH ASSIGNMENT OF ERROR.

That the Court erred in overruling Trustee's Exception IV, reading as follows:

"The Trustee excepts to Finding of Fact V for the reason that said Finding is absolutely contrary to the evidence."

FIFTH ASSIGNMENT OF ERROR.

That the Court erred in overruling Trustee's Exception V, which reads as follows:

"The Trustee excepts to Conclusion of Law I as based on Findings of Fact contrary to the evidence."

SIXTH ASSIGNMENT OF ERROR.

That the Court erred in overruling Trustee's Exception VI, reading as follows:

"The Trustee excepts to the Conclusion of Law II as based on Finding of Fact contrary to the evidence."

SEVENTH ASSIGNMENT OF ERROR.

That the Court erred in confirming the Findings of Fact and Conclusions of Law and Report of the Special Master.

EIGHTH ASSIGNMENT OF ERROR.

That the Court erred in granting the bankrupt a discharge.

NINTH ASSIGNMENT OF ERROR.

That the Findings of Fact and Conclusions of Law of the Special Master were based on the express theory that an opposition to a discharge in bankruptcy is in the nature of a criminal proceeding and that proof must be beyond all reasonable doubt in order to sustain objections to a bankrupt's discharge and that the Court erred in confirming Findings of Fact, Conclusions of Law and Report based on such a theory of law.

TENTH ASSIGNMENT OF ERROR.

That the Court erred in refusing to deny a discharge to the bankrupt.

WHEREFORE, the Trustee and Objector prays that said Order may be reversed and the cause remanded with instructions to deny the bankrupt a discharge.

Wm. H. Moore, Jr.,

TRUSTEE IN BANKRUPTCY AND OBJECTOR
W. T. Craig

SOLICITOR FOR TRUSTEE AND OBJECTOR
Thomas S. Tobin
OF COUNSEL.

[Endorsed]: Service of the within Assignment is hereby admitted this 21st day of June, 1929. D. M. Potter & A. J. Getz, attorney for Bankrupt. Filed Jun. 21, 1929, at.....min. past 5 o'clock P. M. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy.

[TITLE OF COURT AND CAUSE.]

ORDER ALLOWING APPEAL.

WM. H. MOORE, JR., Trustee in Bankruptcy for the Estate of Abe Silverstein, having filed his petition in this Court for an Order allowing an appeal from the Order and Decree of this Court entered June 4, 1929, to the United States Circuit Court of Appeals for the Ninth Circuit, and the Court having considered the same, it is hereby

ORDERED, that said appeal be, and it hereby is, allowed, and that a certified transcript of the Record, Testimony, Exhibits, Stipulations and all other proceedings be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

DONE at Los Angeles in the Southern District of California, this 21st day of June, 1929.

Wm. P. James

UNITED STATES DISTRICT JUDGE

United States of America }
Southern District of California } ss.
Southern Division }
County of Los Angeles }

Wm. H. Moore, Jr., being duly sworn says: That he is the Trustee in Bankruptcy and Objector in the foregoing entitled matter; that he has read the foregoing petition for Appeal and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes them to be true.

Wm. H. Moore, Jr.

Subscribed and sworn to before me this 21 day of June A. D. 1929.

[Notarial Seal]

Olive Diffenderfer

Notary Public in and for the County of Los Angeles, State of California

[Endorsed]: Service of the within Petition is hereby admitted this 21st day of June, 1929. D. W. Potter & A. J. Getz Attorney for Abe Silverstein, Bank. Filed Jun. 21, 1929, at min. past 5 o'clock P. M. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy.

[TITLE OF COURT AND CAUSE.]

PRAECIPE.

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

You are hereby requested to make a transcript of the Record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above entitled proceeding and to include in such transcript the following:

1. Citation.
2. Petition for Appeal and Order Allowing Appeal.
3. Stipulation of Certain Facts.
4. Specifications of Objection to Discharge of Bankrupt.
5. Order Referring Issues Raised by Bankrupt's Application for a Discharge and Specifications of Objection, filed thereto to James L. Irwin, Esquire, as Special Master.

6. Statement of evidence taken before Special Master in hearing on Opposition to Discharge and Order Settling same.
7. Report of Special Master recommending Discharge.
8. Exceptions of Trustee to Special Master's Report.
9. Order confirming Report of Special Master and granting Bankrupt a discharge, and discharge of bankrupt.
10. Assignment of Errors.
11. Praecipe.

W. T. Craig

SOLICITOR FOR TRUSTEE AND OBJECTOR

Thomas S. Tobin

OF COUNSEL.

[Endorsed]: Service of the within praecipe is hereby admitted this 21st day of June, 1929. D. M. Potter & A. J. Getz, attorney for Abe Silverstein, Bank. Filed Jun. 21, 1929, at.....min. past 5 o'clock P. M. R. S. Zimmerman, Clerk. B. B. Hansen, Deputy.

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 79 pages, numbered from 1 to 79 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; order of reference; specifications of objections to discharge of bankrupt; report of special master after hearing objections to discharge; notice of reopening to take testimony; exceptions of trustee to special master's report; order; stipulation of certain facts; statement of evidence; order settling statement of evidence; petition for appeal; assignment of errors; order allowing appeal, and praecipe.

I DO FURTHER CERTIFY the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to.....and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this..... day of May, in the year of Our Lord One Thousand Nine Hundred and Twenty-nine, and of our Independence the One Hundred and Fifty-fourth.

R. S. ZIMMERMAN,

Clerk of the District Court of the
United States of America, in and
for the Southern District of
California.

By

Deputy.